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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,450	07/31/2003	Robert D. Harty	0006/00921	4683
27197 7590 09/27/2007 CHERSKOV & FLAYNIK THE CIVIC OPERA BUILDING 20 NORTH WACKER DRIVE, SUITE 1447 CHICAGO, IL 60606			EXAMINER LEWIS, KIM M	
			ART UNIT 3772	PAPER NUMBER
			MAIL DATE 09/27/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/633,450

Applicant(s)

HARTY, ROBERT D.

Examiner

Kim M. Lewis

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3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 6/25/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3, 6 and 8 is/are allowed.
- 6) ☒ Claim(s) 2, 4, 5, 7, 9-11 and 15-19 is/are rejected.
- 7) ☒ Claim(s) 12-14 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☒ Other: Detailed Action.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 6/25/07 has been received. As requested, claims 2-11, 15 and 16 have been amended.
2. Claims 2-20 are pending in the instant application.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 2, 4, 10, 15 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,334,133 ("Carroll").

As regards claims 2, 4, 10, 15 and 19, Carroll discloses an immobilizing cervical collar (12) connected to a backboard (26), and since applicant's claims do not recite that the first, second and third substrates are separate and distinct, the collar anticipates applicant's claimed invention. As can be seen in Fig. 5, the cervical collar of Carroll has a first substrate for supporting the back of the patient's head, a second substrate in communication with the first substrate, whereby the second substrate is adapted to encircle the patient's neck; a third substrate in communication with the second substrate, whereby the third substrate contacts the patient's chest, a means (23) for

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securing the collar to a backboard, and padding (21, 22) for cushioning the patient. As can be seen in Fig. 2, Carroll discloses an aperture (16) to allow access to a patient's trachea, and the ears of the patient are clearly visible for inspection.

5. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,045,523 ("Donaldson").

As regards claim 9, Donaldson anticipates applicant's claimed invention. More specifically, Donaldson discloses an integrally molded, transparent cervical collar, comprising first, second and third substrates as presently claimed. Donaldson also discloses a separate chin support (54) affixed to the cervical collar by rivets (56).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 5, 7, 11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carroll.

As regards claims 5, 7, 11 and 16, Carroll substantially discloses all of features of the claims as evidenced by the rejection of claim 2 above. As to the other features, such a, for example, the first, second and third substrates being integrally molded (claim 5), the substrates being transparent (claim 7), the third substrate extending at least as low as the patient's second rib (claim 11), and one of the substrates comprising a tube (claim 16).

The examiner contends that the features of claims 5, 7, 11 and 16 are known in the art, and the addition or modification of the device of Carroll with such features would have been obvious to one having ordinary skill in the art to 1) have a one piece unit that is easy to manufacture and easy to don (claim 5 see the Donaldson patent), 2) to allow the user to inspect the neck (claim 7, see the Donaldson patent), 3) to support other portions of the body such as the ribs (claim 11 see the Calabrese patent), and 4) to allow for ventilation (claim 16, see U.S. Patent No. 2003/0149384 A1).

9. Claim 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donaldson.

As regards claims 17 and 18, Donaldson fails to teach the adjustability of the chin support. However, it has been held that adjustability, where desirable, is a modification that is within the skill of the art. *In re Stevens*, 212 F.2d 197, 101 USPQ 284 (CCPA

1954). Thus, it would have been obvious to one having ordinary skill in the art to modify Donaldson by making the chin support adjustable to fit different patients.

***Allowable Subject Matter***

10. The indicated allowability of the subject matter recited the claims of the office action of 3/26/07 is withdrawn in view of the new rejections above.

11. Claims 3, 6 and 8 are allowed.

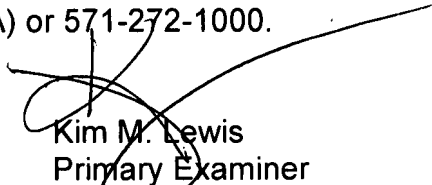
12. Claims 12-14 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Wednesday to Friday, from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco, can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kim M. Lewis  
Primary Examiner  
Art Unit 3772

kml  
September 16, 2007